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**From:**

**Sent:** Wednesday, August 22, 2012 3:43:55 PM

**To:**

**Cc:**

**Subject:** Response to Request for Legal Advice on NOL issue,

We are responding to your request for review of legal advice regarding unclaimed consolidated net operating loss carryback (CNOL) and § 301.6511(d)-2(a)(3) of Income Tax Regulations. We concur with your draft response and the treatment of § 301.6511(d)-2(a)(3) and Revenue Ruling 81-88. We agree that the CNOL should not be taken into account in calculating the available taxable income for and prior to applying the CNOL.

However, we would like to point out that there are two provisions in the consolidated return regulations under § 1502 that may impact your response. First, the taxpayer could request an extension of time under §§ 301.9100-1 through 301.9100-3 to file a § 172(b)(3) election to waive the carryback period for its CNOL. Section 1.1502-21(b)(3)(i) provides that a group may make an irrevocable election under § 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. We express no opinion as to whether the taxpayer satisfies the standards under the regulations to receive § 9100 relief to make the election.

Second, the amount of the group's CNOL that may be carried to the group's and taxable years depends on whether any member of the group that contributed to the CNOL has a separate return year as defined in § 1.1502-1(e). Section 1.1502-21(b)(2)(i) provides that if any CNOL that is attributable to a member may be carried to a separate return year of the member, that amount of the CNOL that is attributable to the member is apportioned to the member and carried to the separate return year. Section 1.1502-1(e) defines a separate return year as a taxable year of a corporation for which it files a separate return or for which it joins in the filing of a consolidated return by another group. Accordingly, if any member of the group that contributed to the CNOL has a separate return year, that will affect the amount of the CNOL that may be carried to the group's and taxable years.

Should you have any questions regarding § 172, please let me know. If you have any questions regarding § 301.6511(d)-2(a)(3) or Revenue Ruling 81-88, please contact

. If you have any questions regarding § 1502, please contact

. Thank you.